IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.3159 OF 2005

Shri Gorya Vithal Koli & Ors. : Petitioners

V/s.

State of Maharashtra & Ors. : Respondents

...

Mr.C.G.Gavnekar for the petitioners.

Mrs.V. Mhaispurkar, Asstt. Govt. Pleader, for the respondent nos.1 to 3.

Mr.M.B.Baodkar for the respondent nos.5 to 9.

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CORAM : S.A. BOBDE, J.

August 29, 2005.

P.C.:

1. Rule, returnable forthwith.

Mrs.Mhaispurkar, learned Asstt. Govt. Pleader for the respondent nos.1 to 3, and Mr.Baodkar, learned counsel for the respondent nos.5 to 9, appear and waive service of rule.

Heard by consent.

2. The petitioners are members of the Managing Committee of the respondent no.4 society. The Managing Committee

has been superseded under section 78 of the Maharashtra Co-operative Societies Act, 1960, hereinafter referred to as the "Act". This Court issued notice and granted ad-interim relief in terms of prayer clause (c) on 14.7.2005 which reads as follows:-

> "(c) Pending the hearing and final disposal of the above said Writ Petition, Your Lordship be pleased to stay the impugned order dated 23-2-2005 annexed at Exh.A passed by the Respondent No.2 and order dated 17-3-2005 annexed at Exh.D passed by the Respondent No.3."

3. It appears that thereafter in purported compliance with the order of this Court, the Asstt. Registrar, Co-operative Societies (Dairy) removed the charge of the society from the Board of Administrators and handed it over to the superseded Committee. Thereafter, without any subsequent event having taken place either in fact or in terms of the order of this Court, the Asstt. Registrar has passed an order dated 5.8.2005 removing the charge from the members of the Managing committee and handed it over back to the Board of Administrators. This is indeed

strange.

4. However, the learned Asstt. Govt. Pleader points out that this was done in view of the fact that the petitioners had not pressed for and, in any case, this Court had not granted ad-interim relief in terms of prayer clause (d) which reads as follows:-

> "(d) Pending the hearing and final disposal of the above said Writ Petition, Your Lordship be pleased to restrain the Respondents Nos.5 to 7 from acting as Administrators of the Respondent No.4 and Petitioners be permitted to act as members of the managing committee of the Respondent No.4."

It is difficult to see why this ought to have influenced the Asstt. Registrar in this way i.e. provoked him to reinstate the Board of Administrators in spite of the fact that the order of stay to the supersession of the Managing Committee was granted by this Court. However, granting the benefit of doubt to the Asstt. Registrar, it would be sufficient to caution him to act with greater care in such

matters in future.

5. As regards the merits of the case, it appears that there has been no effective consultation as contemplated under section 78 of the Act. Admittedly, the only document submitted to the federal society was a copy of the show cause notice and that too without the reply. The petitioners have, therefore, clearly made out a case since similar action has been held in contravention of section 78 of the Act by this Court in several decisions, the last of which is in Arjun P. Khotkar v. State of Maharashtra, reported in 2002 (2) Bom.C.R. 368, para 9 of which reads as follows:-

> "9. The Division Bench in Agricultural Produce Market Committee's case (supra) has held that the consultation is not an empty formality or a ritual. It has to be real, full and effective. Unless there has been full consideration of all the matters relevant to the question, it cannot be said that the process of cannot (sic) has taken place. It has been further observed that there is a corresponding duty also on the body whose consultation is mandatory to

give its opinion. Mere sending of a copy of the show cause notice without anything more cannot amount to consultation within the letter and spirit of the proviso to section 45(1) of the Agricultural Produce Marketing (Regulation) Act. It was also held that no opinion could be given only on the basis of a show cause notice issued by the District Deputy Registrar and the way, reply was sought showed that the authorities treated the requirement of consultation in a most casual fashion as if it was a mere ritual. The facts of the said case also disclose that apart from mere sending of the copy of the show cause notice, nothing more was done to have effective consultation with the Federation of the Market Committees as was otherwise required to be done under section 45(1) of the concerned Act. It was specifically observed by the Division Bench that neither the defence put up by the market committee nor the relevant material on the basis of which proposed supersession was to take place was placed before the Federation and

> therefore, no opinion could be given only on the basis of a show cause notice issued by the respondent and hence, there was no effective consultation."

6. In this view of the matter, instead of remitting the matter and letting the matter proceed before the appellate authority, having regard to the material on record and the settled position of law, I am of view that the impugned order dated 23.2.2005 is liable to be set aside and is hereby set aside.

7. The respondent nos.1 to 3, however, shall be at liberty to take a fresh action, in accordance with law, against the Managing Committee of the respondent no.4 society, as may be advised.

8. The rule is made absolute in terms of prayer clauses (a) and (b).

S.A. BOBDE, J.